BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

B. JUNE PALMER	)	
Claimant	)	
VS.	)	
	)	Docket No. 248,202
DCCCA	)	
Respondent	)	
AND	)	
	)	
HARTFORD ACCIDENT & INDEMNITY	)	
Insurance Carrier	)	

ORDER

Respondent appeals a preliminary hearing Order granting claimant's request for medical treatment. The Order, dated November 16, 1999, allows claimant to select a physician from a list of three provided by respondent.

ISSUES

Did claimant suffer an injury arising out of and in the course of employment?

Respondent argues claimant's injury did not arise out of and in the course of her employment because : (1) it was caused by personal risk of Meniere's disease; and (2) the injury was caused by an activity of day-to-day living, walking up stairs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds the preliminary hearing Order should be affirmed.

Claimant worked as a counselor for respondent at the Winfield Correctional Facility. On April 1, 1999, she injured her right hand when she missed a step and fell forward hitting her hand between the thumb and wrist on the top step. Her office was on the third floor and she was about four steps from the top when she fell. Claimant's job required that she climb these stairs as much as 20 to 30 times in a day. There was no handrail on the right side as you climb up the stairs.

Claimant has Meniere's disease, a condition that causes her to lose her balance and fall. She takes medicine that generally controls the Meniere's. Claimant testified that the Meniere's was controlled at the time she fell on April 1, 1999. Nothing in the medical or other evidence contradicts claimant's testimony on this point.

On the basis of these facts, the ALJ awarded claimant medical treatment and the Board agrees. Respondent makes two points to challenge this conclusion. First, respondent contends the injury was caused by claimant's personal condition, the Meniere's disease. An injury that arises only from a personal condition of the employee, with no other factors as a cause, is not compensable. *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001, *rev. denied* 250 Kan. 804 (1992). In this case claimant testified the Meniere's disease was under control. While the evidence also shows that claimant sometimes fell even when the disease was under control, nothing in the evidence to date indicates claimant's fall on April 1, 1999, was caused by this condition.

Respondent next cites provisions of K.S.A. 44-508(e) stating an injury should not be deemed to be caused by employment if the disability results from the natural aging process or the "activities of day-to-day living." Respondent contends walking up stairs is an activity of day-to-day living and claimant's injury is not compensable for that reason. Walking up stairs, respondent argues, is something people commonly do as a part of day-to-day living at home and in public.

The Board does not construe the provision of K.S.A. 44-508(e) as respondent urges. The Board does not consider injury from a fall while walking up stairs at work to be injury resulting from "activities of day-to-day living." The injury resulted from the fall and a fall is not, in our view, an "activity of day-to-day living." The reference to injury caused by activities of day-today living should be construed as a reference to injury that occurs from the gradual wear of day-to-day activities no more at work than away from work as in *Boeckmann v. Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark on November 16, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this _____ day of February 2000.

BOARD MEMBER

c: Orvel B. Mason, Arkansas City, KS
Richard J. Liby, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director